SBCivil Writ Petition No.5271/2004

Marwar Gramin Bank Employees Union, Pali Marwar
Vs.
The Marwar Gramin Bank, Pali Marwar & Anr.

Date of Order :: 4th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.P.Sharma, for the petitioner.
Mr. V.K.Mathur, for the respondents.

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By this petition for writ the petitioner, a trade union, is ventilating grievance of its member Shri Navendra Pal who has holding the post of clerk-cum-cashier (Group “B”) with the respondent Bank.

In brief, facts of the case are as follows:-

The holders of Group “B” posts in the respondent bank are having an avenue for promotion to the cadre of officer scale Ist (Group “A”) and for the year 2002-2003, 28 posts in the cadre above were determined and notified to be filled in by way of promotion. Out of these 28 posts two posts were kept reserved to be filled in from amongst the incumbents belonging to Scheduled Tribes, however, no person belonging to that category was available in feeding cadre. In view of this fact the respondent bank while making promotion of 26 employees of Group “B” category kept two posts vacant. According to the petitioner the

respondents erroneously kept those two posts vacant as according to applicable criteria adopted by the bank in this regard under a circular dated 6.11.2003 in event of non availability of persons belonging to reserved categories the posts are required to be filled in from amongst the employees belonging to general categories. The relevant portion of the circular dated 6.11.2003, upon which reliance is placed by the petitioner, reads as under:-

> (i) समूह "ग" के किसी पद से समूह "ख" के किसी उच्चतर पद पर समूह "ख" के किसी पद से समूह "ख" के ही किसी उच्चतर पद पर और समूह "ख" के किसी पद से समूह "क" के निम्नतम स्तर के किसी पद पर चयन द्वारा पदोन्नति सहित, पदोन्नति के मामलों में आरक्षित रिक्त पदों पर पदोन्नति हेतु अनुसूचित जातियों/अनुसूचित जनजातियों के उपयुक्त उम्मीदवार पर्याप्त संख्या में नहीं मिल पाने की स्थिति में ऐसे आरक्षित रिक्त पद, निर्धारित प्रक्रिया के अनुसार विआरक्षित कर दिए जाएँ और अन्य वर्गों-समुदायों के उम्मीदवारों से भर दिए जाएँ।
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> (ii) आरक्षित रिक्त पदों पर पदोन्नति हेतु अनुसूचित जातियों/अनुसूचित जनजातियों के उपयुक्त उम्मीदवार पर्याप्त संख्या में नहीं मिल पाने और ऐसे रिक्त पद, उन्हें भरने हेतु अन्य श्रेणियों के उम्मीदवार नहीं मिल पाने इत्यादि जैसे कारणों से विआरक्षित भी नहीं किए जा सकने की स्थिति में, ये रिक्त पद भरे नहीं जाएँ और अगले भर्ती-वर्ष तक रिक्त बने रहने दिए जाएँ। ये रिक्त पद, "बकाया चले आ रहे रिक्त पद" माने जाएँ।"

It is contended by counsel for the petitioner that if the respondents adhere the circular referred

above Shri Navendra Pal shall be entitled to be promoted in Group “A” cadre. Much emphasis is given by counsel for the petitioner to the effect that no person belonging to Scheduled Tribe is available in feeding cadre and, therefore, the posts kept vacant shall remain unoccupied for an indefinite period.

In reply to the writ petition the respondents came out with a case that two posts kept vacant in Group “A” category pertains to Scheduled Tribes, therefore, the same are carry forwarded to be filled in subsequent years. The fact that at present no person belonging to Scheduled Tribe is available in feeding cadre is not denied by the respondents. It is also stated by the respondents that Shri Navendra Pal does not stand at a suitable rank in the select list, therefore, even in the event of acceptance of this writ petition he shall not be promoted to Group “A” category.

Heard counsel for the parties.

The respondents while stating that the posts kept vacant while making promotion to Group “A” category pertains to Scheduled Tribes have not denied the fact that circular dated 6.11.2003 is having application on it. From reading of relevant portion of circular referred above it is apparent that while making promotion to the lowest post in Group “A” from

Group “B” in event of non availability of persons belonging to reserved categories the reserved posts are required to be filled in by giving promotion to the persons belonging to general category.

In the instant matter too the respondents made promotion to the lowest post in Group “A” from Group “B”, therefore, the appropriate course before the respondents in accordance with circular dated 6.11.2003 was to fill in the existing vacancies pertaining to Scheduled Tribe by way of giving promotion to the persons belonging to general categories. It is important to note that no person belonging to Scheduled Tribe is even working in feeder cadre, therefore, the posts kept vacant for Scheduled Tribes shall remain unoccupied for an indefinite period and that will certainly effect the efficiency of the bank while providing service to the society. In view of it, keeping the posts vacant in Group “A” category is neither in interest of bank nor in interest of public, beside that it is in violation of guidelines prescribed by Government of India under circular dated 6.11.2003.

In view of whatever discussed above the petition for writ is allowed with a direction to the respondent bank to fill in two posts in Group “A” category those were kept vacant being pertaining to reserved category i.e. of Scheduled Tribes. The

promotions on these two posts shall be made by the respondent bank on the basis of the selection proceedings as a consequent to that promotion to 26 persons is already given. If Shri Navendra Pal stands in merit of candidates selected for promotion, promotion be accorded to him.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.